

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Mary Penland,)	
)	
Plaintiff,)	Civil Action No. 6:07-3977-HFF-WMC
)	
vs.)	<u>REPORT OF MAGISTRATE JUDGE</u>
)	
United States of America,)	
)	
Defendant.)	
)	

The *pro se* plaintiff filed this action against the United States seeking to void a forfeiture agreement she entered into with the United States on March 14, 2006. The agreement is filed in her husband's criminal case. *United States v. Charles W. Penland*, Cr. No. 7:05-710-HFF. She alleges that she was forced under duress to sign the agreement and that it should be invalidated. She further alleges that her constitutional rights were violated when she was forced to sign the agreement. As relief, the plaintiff seeks the return of her property that she alleges was illegally taken.

On the same date that she filed her complaint, the plaintiff filed a motion for return of property (doc. 2). In her motion, she asks that the court order the return of her property, which she values at approximately \$23,000,000. The plaintiff's motion goes to the ultimate issue of this action and seeks the very relief sought in her complaint. Accordingly, this court has construed the motion as one for summary judgment pursuant to Federal Rule of Civil Procedure 56.¹

This court recommends that the plaintiff's motion be denied as it is not clear that the plaintiff is entitled to judgment as a matter of law.

June 11, 2008
Greenville, South Carolina

s/William M. Catoe
United States Magistrate Judge

¹Notably, the motion was filed on the date the action was commenced. Accordingly, it was filed too early under Rule 56(a). Further, a judgment on the pleadings under Rule 12(c) can be filed only after the pleadings are closed. The defendant was served on May 15, 2008, and has not yet filed an answer in this case.